

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

C O R A M

THE HON'BLE MR.JUSTICE M.S.RAMESH

C.R.P.[NPD] No.46 of 2017

and

C.M.P.Nos.283 & 6069 of 2017

Uthiraapathi

... Petitioner

Vs

Sandhanabakkiam [died]

1.Viruthambal

2.Renganathan

Rajangam [died]

3.Govindarasu

Elayaperumal [died]

4.Rajalakshmi

5.Minor Ezhilarasan

Rep. by his father Velmurugan

6.Minor Tamizh

Rep. by his father Velmurugan

7.Manikandan

8.Govindammal

9.Muthulakshmi

10.Minor Sellappan

Rep. by his father Jayapal

11.Minor Vijayan

Rep. by his father Jayapal

12.Minor Valli

Rep. by her mother Selvi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 12.07.2016 made in E.A.No.479 of 2010 in E.P.No.186 of 2009 in O.S.No.922 of 1984 on the file of Principal District Munsif, Vridhachalam.

For Petitioner : Mr.V.Manohar
For R1 : Mrs.R.Meenal
For RR2 to 12 : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 12.07.2016 made in E.A.No.479 of 2010 in E.P.No.186 of 2009 in O.S.No.922 of 1984 on the file of Principal District Munsif, Vridhachalam.

2. The petitioner herein is the fifth judgment debtor. The suit for declaration and recovery of possession came to be decreed on 26.02.1991 and the same was confirmed till the second appeal before this Court. In the Execution Petition filed by the decree holder and one Viruthambal/the first respondent herein, who claimed to be a beneficiary under the Will of the original decree holder. The petitioner had raised objections questioning her locus to file the Execution Petition, which prompted the first respondent herein to file an application under Section 146 of C.P.C. to add herself as second petitioner in the Execution Petition. The said application came to be allowed, permitting the first respondent herein to proceed with the Execution Petition as the representative of the deceased decree holder. The said order is under challenge in the present revision.

3. The learned counsel appearing for the petitioner submits that the first respondent herein has no locus to maintain the Execution Petition, since the Will, through which she claims right over the benefits of the decree, requires to be proved through independent proceedings. As such, the order passed by the Execution Court is not in accordance with law.

4. The learned counsel for the first respondent, on the other hand, objected to the said submissions, and stated that the first respondent herein is a beneficiary under the Will executed by the late decree holder and as such all the rights that accrued in favour of the deceased decree holder had been derived by the first respondent herein.

5. The learned counsel further submitted that the suit was filed in the year 1984 and though the suit came to be decreed in the year 1991, the petitioner herein had been successfully squatting in the suit premises for the past 27 years. Since there was no illegality in the first respondent getting along with the execution proceedings, it is her submission that the Execution Court had properly analyzed the legal proposition and allowed the application. Hence, the learned counsel sought for rejection of the Civil Revision Petition.

6. I have given my careful consideration to the submissions made by the respective counsels.

7. It is not in dispute that the first respondent herein is a beneficiary of the suit properties through a registered Will dated 01.08.2005 executed by the late decree holder and that the suit properties had devolved on the first respondent. When the decree in the suit had become final and the suit properties have been subsequently inherited by the first respondent herein, she would have all the rights that accrued in favour of the deceased decree holder. In other words the beneficiary, namely, the first respondent herein would step into the shoes of the decree holder and as such, she would be legally entitled to benefits of the decree executed in her capacity as representative of the decree holder.

8. Hence, I do not find any illegality in the findings of the Execution Court in permitting the first respondent herein to conduct the Execution Petition in her capacity as the representative of the deceased decree holder. The learned counsel for the petitioner had raised a ground stating that the Will requires to be proved through independent proceedings and not in the execution proceedings.

Such a submission is not backed by any law or provision and as a

matter of fact, before the Execution Court, the first respondent herein had let in evidence to prove her claim and had also examined herself as P.W.1. The death certificate of the decree holder and the registered Will were also marked as Exhibits. The petitioner herein had not produced any oral evidence on his side. In spite of opportunity given to the petitioner herein, he had failed to disprove the Will and as such the Execution Court was justified in allowing the first respondent herein to get along with the execution proceeding as the representative of the late decree holder. Since the Will has been properly proved before the Execution Court, the petitioner herein cannot insist to have the Will proved through independent proceeding. As such, I do not find any infirmity in the order of the Execution Court.

9. Accordingly, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

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Speaking order/Non speaking order

Index : Yes/No

Internet : Yes/No

rsi

To

The Principal District Munsif,
Vridhachalam.

M.S.RAMESH, J.
rsi



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